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Regional Home Care, Inc., d/b/a North Atlantic Medical Services and Truck Drivers Union Local No. 170 a/w International Brotherhood of Teamsters, AFL-CIO. Case 1-CA-37697

March 20, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND HURTGEN

Pursuant to a charge filed on November 10, 1999,¹ the General Counsel of the National Labor Relations Board issued a complaint on December 16, 1999, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to furnish information following the Union's certification in Case 1-RC-20292. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On January 24, 2000, the General Counsel filed a Motion for Summary Judgment. On January 28, 2000, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response opposing the General Counsel's motion.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits that it is refusing to bargain and to furnish information that is alleged as relevant and necessary to the Union's role as bargaining representative, but attacks the validity of the certification on the basis of its objections to the election.²

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to ad-

duce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

Further, although the Respondent states in its answer that it has insufficient knowledge or information to admit or deny the allegation that the information requested by the Union is relevant and necessary, it is well established that employment information of the type requested is presumptively relevant for purposes of collective bargaining and must be furnished on request.³ We therefore find that no material issues of fact exist with regard to the Respondent's refusal to furnish the information sought by the Union.

Accordingly, we grant the Motion for Summary Judgment⁴ and will order the Respondent to recognize and bargain with the Union and to furnish it the information requested.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business in Leominster, Massachusetts, has been engaged in the delivery of oxygen and durable medical equipment and supplies to private homes and to nursing homes.

During the calendar year ending December 31, 1998, the Respondent, in conducting its business operations, derived gross revenues in excess of \$500,000.

During the same period of time, the Respondent, in conducting its business operations, performed services valued in excess of \$50,000 in States other than the Commonwealth of Massachusetts.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held June 1, 1995, the Union was certified on October 1, 1999, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

¹ Although the Respondent states that it has insufficient knowledge or information to admit or deny the complaint allegations with respect to the filing and service of the charge, it is clear from the exhibits attached to the General Counsel's motion that the charge was filed and served as alleged in the complaint, and the Respondent has not challenged the authenticity of those documents.

² Although the Respondent states that it has insufficient knowledge or information to admit or deny paragraph 5 of the complaint alleging the labor organization status of the Union, the Respondent failed to raise this issue in the underlying representation proceeding. Accordingly, we find that the Respondent is precluded from litigating the matter in this proceeding. See *Biewer Wisconsin Sawmill*, 306 NLRB 732 fn. 1 (1992), and *Wickes Furniture*, 261 NLRB 1062, 1063 fn. 4 (1982).

³ See *Masonic Hall*, 261 NLRB 436 (1982) and *Verona Dyestuff Division*, 233 NLRB 109, 110 (1977).

⁴ Member Hurtgen notes that while he dissented in part from the Board's September 9, 1999 Decision, Order and Direction, his dissent did not go to the issues presented in this proceeding.

All regular full-time and part-time field service equipment technicians (drivers), equipment repairmen, warehousemen, delivery men, and dispatchers employed by the Respondent at its Leominster, Massachusetts facility, but excluding all other employees, office clerical employees, professional employees, managerial employees, confidential employees, guards, and supervisors as defined in the Act.⁵

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

About October 4, 1999, the Union, by letter, requested the Respondent to recognize and bargain and, since October 4, 1999, the Respondent has failed and refused. Since about October 15, 1999, the Union, by letter from its attorney, requested the Respondent to furnish the names, addresses, telephone numbers, and seniority dates of unit employees. Since about October 15, 1999, the Respondent has failed and refused. We find that these failures and refusals constitutes unlawful refusals to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing on and after October 4, 1999, to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union the requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

⁵ Although the Respondent's answer denied the appropriateness of this unit, that denial does not raise any matter warranting a hearing because the Respondent stipulated to this unit in the Stipulated Election Agreement in Case 1–RC–20292. We further note that the Respondent has not challenged the appropriateness of the unit in its response to the Notice to Show Cause in this case, nor has it explained its denial in the face of its prior stipulation.

ORDER

The National Labor Relations Board orders that the Respondent, Regional Home Care, Inc., d/b/a North Atlantic Medical Services, Leominster, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Truck Drivers Union Local No. 170, a/w International Brotherhood of Teamsters, AFL–CIO, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All regular full-time and part-time field service equipment technicians (drivers), equipment repairmen, warehousemen, delivery men, and dispatchers employed by the Respondent at its Leominster, Massachusetts facility, but excluding all other employees, office clerical employees, professional employees, managerial employees, confidential employees, guards, and supervisors as defined in the Act.

(b) Furnish the Union the information that it requested on October 15, 1999.

(c) Within 14 days after service by the Region, post at its facility in Leominster, Massachusetts, copies of the attached notice marked "Appendix."⁶ Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees em-

⁶ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

ployed by the Respondent at any time since October 4, 1999.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 20, 2000

John C. Truesdale, Chairman

Wilma B. Liebman, Member

Peter J. Hurtgen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Truck Drivers Union Local No. 170, a/w International Brotherhood of Teamsters, AFL-CIO, as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All regular full-time and part-time field service equipment technicians (drivers), equipment repairmen, warehousemen, delivery men, and dispatchers employed by us at our Leominster, Massachusetts facility, but excluding all other employees, office clerical employees, professional employees, managerial employees, confidential employees, guards, and supervisors as defined in the Act.

WE WILL furnish the Union the information it requested on October 15, 1999.

REGIONAL HOME CARE, INC., D/B/A NORTH ATLANTIC
MEDICAL SERVICES